No. 83-315

Office Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

DeVRY INC.,

Petitioner,

v.

JOE ANN McCLANDON,

Respondent.

PETITIONER'S REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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REASONS FOR GRANTING THE WRIT

The issue presented for review to this Court is whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees to a claimant a right to a hearing where an opposing party would thereby be deprived of its vested due process rights in a prior judgment and where the doctrine of *res judicata* would thereby be ignored.

After the Circuit Court's July 2, 1980 ruling that the Commission does not have jurisdiction over McClandon's charges because the requirements of Ill. Rev. Stat. ch. 48,

§858.01(a) were not met, McClandon had the following options: (1) she could appeal that decision; and/or (2) she could appeal the Commission's subsequent dismissal of her charges on September 10, 1980; and/or (3) she could file a lawsuit in Circuit Court under Ill. Rev. Stat. ch. 48, §858.01a, which allowed a person such as McClandon who filed a charge with the Commission prior to March 30, 1978, which charge was not settled, adjusted or, within 180 days of its filing, the subject of a Commission Complaint or an order that no Complaint be issued, to seek relief in Circuit Court. Instead of appealing both/either the Circuit Court's July 2, 1980 ruling and/or the Commission's September 10, 1980 dismissal of her charges and preserving her argument that the Commission has jurisdiction over her charges, McClandon waived that argument and opted only to file a lawsuit under Ill. Rev. Stat. ch. 48, §858.01a—which statute was later ruled unconstitutional. *Wilson* v. *All-Steel, Inc.*, 87 Ill.2d 28, 428 N.E.2d 489 (1981).

McClandon's opposition brief does not address the issue sought to be reviewed here and its importance but rather makes only one serious—albeit irrelevant—argument:[1] that *res judi-*

[1] McClandon makes two other arguments which are simply without merit (Opp. Br. 3 and N. 3).

First, McClandon claims that because she was technically the prevailing party in the July 2, 1980 state court decision, she could not appeal. This, of course, is a disingenuous argument of form over substance. There is no doubt that when the Circuit Court decided that the Commission did not have jurisdiction of McClandon's charges, McClandon was the losing party. Assuming *arguendo* that a technically prevailing party cannot appeal, if McClandon had wanted to appeal, she merely could have asked the Circuit Court to restate its decision, *e.g.*, grant judgment to DeVRY INC. At any rate, McClandon was definitely the losing party in the subsequent September 10, 1980 dismissal of her charges by the Commission. She did not appeal that ruling either.

Second, McClandon argues that she—not DeVRY INC.—has a vested right in the July 2, 1980 order. Obviously, to the extent each party prevailed in substance, that party has a vested right in the ruling.

cata did not bar McClandon's state court lawsuit under Ill. Rev. Stat. ch. 48, §858.01a (Opp. Br. 4-6). Obviously, the principle of *res judicata* does not bar Plaintiff's filing a lawsuit under Ill. Rev. Stat. ch. 48, §858.01a, but it does bar relitigation of the already decided issue that the Commission does not have jurisdiction of Plaintiff's charges—which is precisely the issue McClandon relitigated in, and which was decided with a different result by, the Illinois Appellate Court in this case.

Finally, McClandon's assertion that this issue is "very unlikely to recur" because the successor statute to Ill. Rev. Stat. ch. 48, §858.01a, has been held unconstitutional (Opp. Br. 6-7) is devoid of merit. Whether or not the precise factual situation before this Court will repeat itself is not relevant. What is critically important, however, is the fact that pursuant to the lower Court's ruling which allows relitigation of an unappealed-from issue already finally decided, at the present time the doctrine of *res judicata* is dead in Illinois, a party does not obtain a vested right in a prior ruling and henceforth in Illinois issues can be repeatedly relitigated at whim. In essence, unless this Court grants certiorari and reverses the Illinois Appellate Court's decision, the public policy—espoused by this Court—that there be an end to litigation, *e.g.*, *Federated Department Stores, Inc.* v. *Moitie*, 452 U. S. 394, 401 (1981), is not only disserved but is blatantly thwarted.

CONCLUSION

For these reasons and those set forth in DeVRY INC.'s previously filed Petition for a Writ of Certiorari, it is respectfully submitted that DeVRY INC.'s Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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